

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)	DOCKET NO. 99-11
San Gabriel Valley Superfund Sites,)	
Puente Valley Operable Unit)	AGREEMENT AND COVENANT
)	NOT TO SUE
UNDER THE AUTHORITY OF THE)	Industry Urban-Development
COMPREHENSIVE ENVIRONMENTAL)	Agency and City of Industry
RESPONSE, COMPENSATION, AND)	
LIABILITY ACT OF 1980, 42 U.S.C.)	
§ 9601, <u>et seq.</u> , as amended.)	

I. Introduction

1. This Agreement and Covenant Not to Sue (the "Agreement") is made and entered into by and between the United States on behalf of the Environmental Protection Agency ("EPA"), the Industry Urban-Development Agency ("Settling Respondent") and the City of Industry, California (the "City"). The United States, Settling Respondent, and the City are collectively referred to herein as the "Parties".

2. This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, et seq., and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. Settling Respondent is a public body, corporate and politic, organized and existing as a redevelopment agency under California law, with offices located at 15651 East Stafford Street, City of Industry, California 91744. Settling Respondent has entered into an agreement with Lyle R. and Tammy Weisman which, subject to certain terms and conditions, provides for the purchase by Settling Respondent of the property located at 999 South Hatcher Avenue, in the City of Industry, California, Tax Assessor Number 8264024005 (the "Property").

4. The Property consists of approximately 17 acres of land and is within the area encompassed by the Puente Valley Operable Unit of the San Gabriel Valley Superfund Sites, Areas 1-4. The San Gabriel Valley Superfund Sites were listed on the National Priorities List in 1984 due to the presence of extensive groundwater contamination.

5. The Property was open space until 1965, when it was developed for industrial purposes. The Property was used as an anodizing facility in the early 1980's and a light fixture manufacturing facility from about 1987 to 1999. Settling Respondent intends to develop a solid waste recycling and transfer station on the Property. Settling Respondent does not wish to incur or subject itself to the environmental liabilities that may be associated with Existing Contamination (if any), or the threat thereof, existing on or proximate to the Property as of the date of purchase.

6. The City expects to benefit from this Agreement because it is relying on Settling Respondent's development of the Property to help it meet its solid waste reduction and recycling obligations under Cal. Pub. Res. Code, §§ 41780-41786, as set forth in the City's Final City of Industry Source Reduction and Recycling Element (April 1997).

7. Each of the parties agrees to undertake all actions required of it by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VIII, IX, X, and XI the potential liability of Settling Respondent for the Existing Contamination at the Property which may otherwise result from Settling Respondent becoming an owner of the Property.

8. The Parties agree that Settling Respondent's and the City's entry into this Agreement, and the actions undertaken by Settling Respondent and the City in accordance with this Agreement, do not constitute an admission of any liability by Settling Respondent or the City.

9. The resolution of this potential liability, in exchange for provision by Settling Respondent and the City to EPA of a substantial benefit, is in the public interest.

II. Definitions

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

10. The "City" shall mean the City of Industry, California.

11. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

12. "Existing Contamination" shall mean:

a. any hazardous substances, pollutants or contaminants, present or existing on or under the Property as of the effective date of this Agreement and for which Settling Respondent was not liable before the effective date of this Agreement;

b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Agreement; provided that Settling Respondent was not liable before the effective date of this Agreement for such migrated hazardous substances, pollutants or contaminants; and,

c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto, under or from the Property after the effective date of this Agreement; provided that Settling Respondent was not liable before the effective date of this Agreement for such hazardous substances, pollutants or contaminants and does not cause or contribute to the migration of such hazardous substances, pollutants or contaminants onto, under, or from the Property.

13. "Institutional Controls" shall mean the covenants, conditions, restrictions, and other equivalent requirements and controls authorized by EPA with respect to Existing Contamination for one or more of the following purposes: (1) to restrict the use of groundwater; (2) to limit human or animal exposure to Existing Contamination; (3) to ensure that there is no interference with the performance, operation, and maintenance of any selected response action; and (4) to ensure the integrity and effectiveness of any selected response action.

14. "Parties" shall mean the United States on behalf of EPA, Settling Respondent, and the City.

15. "Property" shall mean the real property encompassing approximately 17 acres, commonly referred to as 999 South Hatcher Avenue in the City of Industry, California, including existing improvements. The Property is more particularly described in Exhibit 1 to this Agreement.

16. "Settling Respondent" shall mean the Industry Urban-Development Agency.

17. "Site" shall mean the San Gabriel Valley Superfund Sites, Areas 1-4, encompassing approximately thirty (30) square miles, located in the San Gabriel Valley of California, and including the

El Monte, South El Monte and Whittier Narrows areas, the Azusa/Irwindale/Baldwin Park area, the City of Alhambra and the La Puente/City of Industry area, which Site is depicted generally on the map attached as Exhibit 2. The Site shall include the Property, and all areas where hazardous substances and/or pollutants or contaminants, have come to be located.

18. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

III. Statement of Facts

19. The Property is located within an area which is primarily industrial and commercial in nature and is established and developed. The Property has most recently been used for industrial purposes.

20. The environmental condition of the soils and groundwater underlying the Property has been the subject of numerous investigations by Maxim Lighting and other entities. Many, if not all, of these investigations were conducted for, and the information produced was shared with, EPA and/or the California Regional Water Quality Control Board - Los Angeles Region.

21. Settling Respondent and the City are not, and have never been, named as potentially responsible parties ("PRPs") at the Site.

22. Settling Respondent has informed EPA that:

a. Settling Respondent has purchased the Property from Lyle R. and Tammy Weisman and intends to develop a solid waste recycling and transfer station on the Property.

b. Settling Respondent's use of the Property is expected to create 45 permanent jobs and increase solid waste recycling within the local community.

23. In 1998, Settling Respondent contributed \$100,000 to a shallow groundwater investigation conducted by the Puente Valley Steering Committee, which is a group of PRPs undertaking investigation and response activities in the Puente Valley Operable Unit. This investigation was the first step in designing the interim remedy for the Operable Unit. Settling Respondent's contribution was valuable in obtaining the Puente Valley Steering Committee's voluntary performance of the investigation. In 1996, Settling Respondent spent approximately \$148,000 on a study to evaluate the potential for domestic reuse of groundwater extracted

and treated by the Puente Valley Operable Unit remedy. This treatability study informed the Steering Committee's evaluation of reuse options for treated groundwater.

24. Settling Respondent and the City own lands and rights-of-way in Industry, California that could provide suitable locations for CERCLA response actions at the Site. The Puente Valley Operable Unit Feasibility Study estimated the value of the land required for extraction wells and treatment facilities for the Puente Valley Operable Unit at \$260,000. Settling Respondent and the City commit in paragraph 32 of this Agreement to make their lands and rights-of-way reasonably available to EPA for the purpose of conducting CERCLA response actions at the Site. The City will not acquire an ownership interest in the Property and therefore is not a beneficiary of the Covenant Not to Sue (Section IX) or Contribution Protection (Section XIX) provided by this Agreement to Settling Respondent.

25. Settling Respondent has provided EPA with a letter dated July 15, 1999, attached as Exhibit 3 to this Agreement, which describes the present status of contamination remaining on the Property and provides assurances that Settling Respondent will:

- (a) complete all closure activities related to former hazardous waste disposal on the Property, including all measures that may be required by the California Department of Toxic Substances Control;
- (b) take measures necessary during the development and use of the Property to ensure that any contamination remaining on the Property is managed in accordance with state and federal requirements and in a manner that does not present a threat to human health or the environment;
- (c) take measures necessary to protect against the future introduction of hazardous substances to the Property; and
- (d) allow for the reasonable use of lands owned and controlled by Settling Respondent and the City of Industry for implementation of remedial actions for the Site.

In entering into this Agreement, EPA has relied upon the information and assurances that are provided in Exhibit 3.

26. Settling Respondent represents, and for the purposes of this Agreement, EPA relies on those representations, that Settling Respondent's involvement with the Property prior to the effective date of this Agreement was limited to inspecting, auditing and performing environmental and other due diligence of the Property in connection with Settling Respondent's purchase of the Property.

IV. Payment

27. In consideration of and in exchange for the United States' Covenant Not to Sue in Section IX herein, Settling Respondent agrees to pay to EPA the sum of twenty-five thousand dollars (\$25,000), within 30 days of the date that this Agreement becomes final. This Agreement shall be considered final if and when, after the close of the public comment period specified in paragraph 63, EPA notifies Settling Respondent in writing that EPA has not withdrawn or modified its consent to the Agreement. Settling Respondent shall make the payment required by this Agreement in the form of a certified check made payable to "U.S. EPA Hazardous Substance Superfund," referencing EPA Region IX, EPA Docket Number 99-11, EPA Site Number 098V, DOJ case number 90-11-2-06631, and name and address of Settling Respondent. Payment shall be sent to:

U.S. EPA
Region IX, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Notice of payment (including a copy of the check and transmittal letter) shall be sent to those persons listed in Section XVI (Notices and Submissions), and to:

Catherine Shen
Financial Management Specialist (PMD-6)
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, California 94105

Section Chief
U.S. Department of Justice
Environmental Enforcement Section
301 Howard Street, Suite 870
San Francisco, CA 94105
Attn: DJ# 90-11-2-06631 (Rockett)

28. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. Work to be Performed

29. Settling Respondent agrees to complete the closure of the former anodizing pit located on the Property in accordance with the requirements of the California Department of Toxic Substances Control ("DTSC"). Settling Respondent's closure plan and schedule is described in Exhibit 3. Settling Respondent may fulfill this obligation by obtaining the performance of a former operator of the Property. At the same time that Settling Respondent sends or receives any document to or from DTSC pertaining to closure activities, Settling Respondent shall provide copies of the documents sent or received to EPA, in accordance with Section XVI of this Agreement.

30. Settling Respondent agrees to implement a soils management program during the development of the Property, as described in Exhibit 3. Settling Respondent must obtain EPA approval for the soils management plan prior to the initiation of any grading or excavation activities on the Property.

31. Settling Respondent's solid waste transfer and recycling station will incorporate "state-of-the-art" features and operating measures to prevent future contamination of the Property. Settling Respondent agrees to incorporate each and every one of the design and operational features described in Exhibit 3 into its development and use of the Property.

32. Settling Respondent and the City agree to provide EPA, or any other entity acting under EPA's direction, reasonable access to, and use of, any vacant land and open areas, such as streets, sidewalks and other rights-of-way, owned or controlled by Settling Respondent or the City, for any purpose related to response actions at the Site, including investigations, design and implementation of a remedial action. EPA shall provide reasonable notice to Settling Respondent and/or the City, as appropriate, of its intent to use any lands made available by this Agreement.

VI. Access/Notice to Successors in Interest

33. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to EPA and the State of California, the authorized officers, employees, representatives of each, and all other persons performing response actions at the Site under EPA or State oversight, an irrevocable right of access at all reasonable times to the Property for the purposes of performing and overseeing response actions at the Site or the Property under federal and state law. EPA agrees, to the extent practicable, to

provide notice to the Settling Respondent of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et seq., and any other applicable statute or regulation, including any amendments thereto.

34. Within 15 days after the date this Agreement becomes final, as described in Section IV (Payment), Settling Respondent shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Los Angeles County, State of California, which shall provide notice to all successors-in-title that the Property is part of the Site, that EPA selected an interim remedy for Puente Valley Operable Unit of the Site on September 30, 1998 and that the Property is subject to this Agreement. Settling Respondent shall record the notice(s) within 10 days of EPA's approval of the notice(s). Settling Respondent shall provide EPA with a certified copy of the recorded notice within 10 days of recording such notice.

35. Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation that is required by this Agreement. Settling Respondent shall expressly require all such persons to abide by the access and cooperation terms hereof in any subsequent lease, assignment or other conveyance by Settling Respondent. Settling Respondent shall ensure that a copy of this Agreement is provided to any current lessee, sublessee, or other occupant on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XII (Parties Bound / Transfer of Covenant) of this Agreement.

VII. Due Care/Cooperation

36. Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. Settling Respondent recognizes that the implementation of response actions at the Site or the Property may interfere with Settling Respondent's use of the Property. Settling Respondent agrees to cooperate fully with EPA and the State of California in the implementation of response actions at the Site or the Property and further agrees not to interfere with such response actions. EPA agrees, consistent

with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Settling Respondent's and its lessees' operations by such entry and response. In the event Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

VIII. Certification

37. By entering into this Agreement, Settling Respondent certifies that to the best of its knowledge and belief Settling Respondent has fully and accurately disclosed to EPA and the State of California all information known to Settling Respondent and all information in the possession or control of Settling Respondent's officers, directors, employees, contractors and agents which relates in any material way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Property and to its qualification for this Agreement. Settling Respondent also certifies that, to the best of its knowledge and belief, it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Property. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, this Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

IX. United States' Covenant Not to Sue

38. Subject to the Reservation of Rights in Section X of this Agreement and subject to payment of the amount specified in Section IV (Payment) of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response or other costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination. This covenant not to sue is contingent upon completion of the work specified in Section V (Work to be Performed) to the satisfaction of EPA.

X. Reservation of Rights

39. The covenant not to sue set forth in Section IX above does not pertain to any matters other than those expressly specified in Section IX (United States' Covenant Not to Sue). The United States reserves and this Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Work to be Performed), Section VI (Access/Notice to Successors in Interest), Section VII (Due Care/Cooperation), and Section XV (Payment of Costs);

b. any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Property to the extent caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

c. any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

d. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, not within the definition of Existing Contamination;

e. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property after the effective date of this Agreement, not within the definition of Existing Contamination;

f. criminal liability;

g. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

h. liability for violations by Settling Respondent of any other local, State or federal law or regulations.

i. liability for Institutional Controls that EPA determines are necessary for achieving protection of human health, welfare or the environment

40. With respect to any claim or cause of action asserted by the United States, Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

41. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

42. Nothing in this Agreement is intended to limit the right of EPA or the State of California to undertake future response actions at the Site or the Property or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site or the Property. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA or the State of California in exercising their authorities. Nothing in this Agreement shall limit the right of EPA or the State of California to require the implementation of Institutional Controls. Settling Respondent acknowledges that the Property is in a location where response actions may be required.

XI. Settling Respondent's Covenant Not To Sue

43. In consideration of the United States' Covenant Not To Sue in Section IX of this Agreement, Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law; any claim under CERCLA Sections 107 or 113 related to the Site; any claim under the Fifth Amendment of the United States Constitution for "takings"; any claim under the Tucker Act, 28 U.S.C. § 1491, or at common law arising out of or relating to access to, land use restrictions, or response activities undertaken at the Site; or any other claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

44. Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight

or approval of plans or activities at the Property or the Site, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XII. Parties Bound/Transfer of Covenant

45. This Agreement shall apply to and be binding upon the United States, and shall apply to and be binding upon Settling Respondent and the City, their officers, directors, employees, successors, and assigns. The United States' Covenant Not to Sue in Section IX and Contribution Protection in Section XIX shall apply to Settling Respondent's officers, directors, employees, successors or assigns, but only to the extent that the alleged liability of the officer, director, employee, successor, or assign is based on its status and in its capacity as an officer, director, employee, successor or assign of Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondent. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

46. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person only with the prior written consent of EPA in its sole discretion.

47. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all terms and conditions, and subject to all the benefits, of this Agreement except as provided for in paragraph 48 or as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VIII of this Agreement in order for the Covenant Not to Sue in Section IX to be available to that party. The Covenant Not To Sue in Section IX shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

48. If all conditions of paragraph 47 have been met, upon the complete transfer of ownership of the Property, such that Settling Respondent retains no interest of any kind in the Property:

(a) Settling Respondent shall be released from the obligations set forth in paragraphs 33 and 35 (except for the first sentence of paragraph 35) (Access/Notice to Successors in Interest) of this Agreement; and

(b) EPA shall be released from its obligations to Settling Respondent (but not to the transferee) under paragraph 33 of this Agreement.

49. Settling Respondent agrees to pay the reasonable costs, including attorneys' fees, incurred by EPA and the State of California to review any subsequent requests for consent to assign or transfer the rights, benefits and obligations hereunder.

XIII. Disclaimer

50. This Agreement in no way constitutes a finding by EPA or the State of California as to the risks to human health and the environment which may be posed by hazardous substances, contaminants or pollutants at the Property or the Site nor does it constitute any representation by EPA or the State of California that the Property or the Site is fit for any particular purpose.

XIV. Document Retention

51. Settling Respondent agrees to retain and make available to EPA and the State of California all business and operating records, contracts, site studies and investigations and documents relating to the presence, use, handling, storage, or disposal of hazardous substances, pollutants, or contaminants at the Property for at least ten years following the effective date of this Agreement, unless otherwise agreed to in writing by EPA and Settling Respondent. At the end of ten years, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XV. Payment of Costs

52. If Settling Respondent or the City fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment) or Section V (Work to be Performed) of this Agreement, Settling Respondent shall be liable for all litigation and

other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance.

XVI. Notices and Submissions

53. All notices to Settling Respondent and/or the City should be sent to:

Carl M. Burnett
Executive Director
Industry Urban-Development Agency
P.O. Box 7089
City of Industry, California 91744

with a copy to:

James A. Geocaris
1601 Dove Street, Suite 105
Newport Beach, California 92660

All notices to the United States should be sent to:

Brett P. Moffatt
Assistant Regional Counsel (ORC-3)
U.S. EPA
75 Hawthorne Street
San Francisco, California 94105

with a copy to:

Penelope R. McDaniel
Superfund Project Manager (SFD-7-3)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105

XVII. Effective Date

54. Settling Respondent has taken possession and control of the Property at its own risk prior to the Regional Administrator's and the Assistant Attorney General's execution of this Agreement and prior to the initiation of the public comment period specified in paragraph 63 of this Agreement. If the Regional Administrator and the Assistant Attorney General execute this Agreement and EPA does not withdraw or modify its consent to this Agreement after reviewing public comments, then the effective date of this Agreement shall be the date upon which Settling Respondent took possession or control of the Property, which

is January 25, 1999. If the Regional Administrator or the Assistant Attorney General does not execute this Agreement, or if EPA withdraws or modifies its consent to this Agreement after reviewing public comments, then there is no Agreement and no effective date.

XVIII. Termination

55. If Settling Respondent or the United States believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of this Agreement, that party may request in writing that the other party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s). Such termination by agreement shall not terminate the other provisions of this Agreement, except as the Parties may otherwise expressly agree.

XIX. Contribution Protection

56. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are Settling Respondent's liability arising from its ownership of the Property for all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person with respect to the Existing Contamination.

57. Settling Respondent agrees that with respect to any suit or claim for contribution brought by Settling Respondent for matters related to this Agreement, it will notify the United States, in writing, no later than 60 days prior to the initiation of such suit or claim.

58. Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify, in writing, the United States within 10 days of service of the complaint on it.

XX. Exhibits

59. Exhibit 1 shall mean the description of the real property which is the subject of this Agreement.

60. Exhibit 2 shall mean the map depicting the Site.

61. Exhibit 3 shall mean the July 15, 1999 letter from Carl M. Burnett, to Brett P. Moffatt.

62. In the event of conflict between this Agreement and any Exhibit to this Agreement, the terms of the Agreement shall control.

XXI. Public Comment

63. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IX

BY:


Keith A. Takata
Keith A. Takata
Director, Superfund Division

9/14/99
Date

IT IS SO AGREED:

U.S. DEPARTMENT OF JUSTICE

BY:



Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division

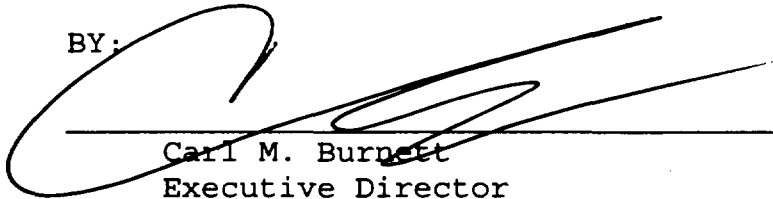
9/30/99

Date

IT IS SO AGREED:

Industry Urban-Development Agency

BY:



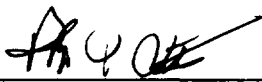
Carl M. Burnett
Executive Director

8-11-99
Date

IT IS SO AGREED:

City of Industry

BY:



Philip Iriarte
City Manager

8-12-99
Date

**DOCKET 99-11
EXHIBIT 1****FILE NO. 68518-RD****SCHEDULE C**

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

Those portions of Lots 9 and 10, of The Rowland Addition No. 2, in the Rancho La Puente, in the City of Industry, County of Los Angeles, State of California, as per map recorded in Book 4, Page 7 of Maps, in the office of the County Recorder of said county, described as follows:

Beginning at a point in the Southeasterly boundary of said Lot 9, distant thereon North 43° 43' 37" East (shown on said map of Rowland Addition No. 2 as North 43° 40' East) 168.75 feet from the Northeast corner of said Lot 10; thence leaving said Southeasterly boundary line and entering said Lot 9 along a line having a bearing of North 85° 54' 39" West which passes through a point in the Westerly boundary of said Lot 9, distant thereon North 6° 36' 14" East 970.30 feet from the Southwest corner of said Lot 9, a distance of 563.83 feet to a point in said line, distant thereon South 85° 54' 39" East 383.73 feet from the point of intersection of said line with the aforementioned Westerly boundary of said Lot 9; thence North 6° 33' 39" East 602.16 feet to a point in the Northeasterly boundary of said Lot 9, distant thereon North 51° 54' 19" West 424.00 feet from the Southeasterly terminus of that certain course in said Northeasterly boundary as shown on said map as having a bearing and length of South 51° 56' East 704.50 feet; thence along the exterior boundary of said Lot 9, the following bearing and distances South 51° 54' 19" East 424.00 feet, South 73° 09' 20" East 339.37 feet, South 1° 35' 56" East 103.10 feet, and South 43° 43' 37" West 242.73 feet to the point of beginning.

EXCEPT THEREFROM that portion of said land designated as Parcels 1, 2 and 3, as described in the deed to the City of Industry, a certified copy of which was recorded March 4, 1968, as Instrument No. 382, in Book D-3929, Page 162, Official Records, in the office of the County Recorder of said county.

EXCEPT THEREFROM one-half interest in all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet from the surface of said property, but with no right of surface entry, as provided in deed recorded in Book D64, Page 669, Official Records.

FILE NO. 68518-RD

(LEGAL DESCRIPTION CONTINUED)

PARCEL 2:

Those portions of Lots 9 and 10, of the Rowland Addition No. 2, in the Rancho La Puente, in the City of Industry, County of Los Angeles, State of California, as per map recorded in Book 4, Page 7 of Maps, in the office of the County Recorder of said county, described as follows:

Beginning at a point in the Southeasterly boundary of said Lot 9, distant thereon North 43° 43' 37" East (shown on said map of Rowland Addition No. 2 as North 43° 40' East) 168.75 feet from the Northeast corner of said Lot 10; thence along the Southeasterly boundary of said Lots 9 and 10, South 43° 43' 37" West 421.60 feet to an angle point therein, thence along the Easterly line of said Lot 10, South 4° 24' 12" West 306.49 feet; thence North 85° 52' 48" West 268.51 feet, more or less to the Westerly line of said Lot 10; thence along said Westerly line; South 5° 23' 39" West 0.22 of a foot, more or less to a line that bears South 85° 53' 46" except from a point in the Westerly boundary of said Lot 9 distant thereon north 6° 36' 14" East 338.36 feet from the Southwest corner of said lot 9; thence North 85° 53' 46" West 436.06 feet; more or less to said Westerly boundary of said Lot 9; thence along said Westerly boundary North 6° 36' 14" East 631.94 feet to a point distant thereon North 6° 36' 14" East 970.30 feet from said Southwest corner of said Lot 9; thence South 85° 54' 39" East 947.56 feet to a point of beginning.

EXCEPT THEREFROM that portion of said land designated as Parcel 3, as described in the deed to the City of Industry, a certified copy of which was recorded March 4, 1968, as Instrument No. 382 in Book D-3929, Page 162, Official Records, in the office of the County Recorder of said county.

EXCEPT THEREFROM one-half interest in all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet from the surface of said property, but with no right of surface entry, as provided in deed recorded in Book D64, Page 669, Official Records.

PARCEL 3:

Those portions of the Southwesterly 20 feet of Chestnut Street and the Westerly and Northwesterly 25 feet on Hatcher Avenue which would pass with the conveyance of that portion of Lot 9 of the Rowland Addition No. 2, in the Rancho LaPuente, in the City of Industry, County of Los Angeles, State of California, as per map recorded in Book 4, Page 7 of Maps, in the office of the County Recorder of said county included within the following described boundaries:

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(LEGAL DESCRIPTION CONTINUED)

Beginning at a point in the Southeasterly boundary of said Lot 9, distant thereon, North $43^{\circ} 43' 37''$ East (shown on said map of Rowland Addition No. 2 as North $43^{\circ} 40'$ East) 168.75 feet from the Northeast corner of said Lot 10; thence leaving said Southeasterly boundary line and entering said Lot 9 along a line having a bearing of North $85^{\circ} 54' 39''$ West which passes through a point in the Westerly boundary of said Lot 9, distant thereon North $6^{\circ} 36' 14''$ East 970.30 feet from the Southwest corner of said Lot 9, a distance of 563.83 feet to a point in said line, distant thereon South $85^{\circ} 54' 39''$ East 383.73 feet from the point of intersection of said line with the aforementioned Westerly boundary of said Lot 9; thence north $6^{\circ} 33' 39''$ East 602.16 feet to a point in the Northeasterly boundary of said Lot 9, distant thereon North $51^{\circ} 54' 19''$ West 424.00 feet from the Southeasterly terminus of that certain course in said Northeasterly boundary as shown on said map as having a bearing and length of South $51^{\circ} 56'$ East 704.50 feet; thence along the exterior boundary of said Lot 9. The following bearing and distances: South $51^{\circ} 54' 19''$ East 424.00 feet, South $73^{\circ} 09' 20''$ East 339.37 feet, South $1^{\circ} 35' 56''$ East 103.10 feet, and South $43^{\circ} 43' 37''$ West 242.73 feet to the point of beginning.

EXCEPT THEREFROM one-half interest in all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet from the surface of said property, but with no right of surface entry, as provided in deed recorded in Book D64, Page 669, Official Records.

PARCEL 4:

Being a portion of Lot 9, The Rowland Addition No. 2, in the City of Industry, County of Los Angeles, State of California, as per map recorded in book 4, Page 7 of Maps, in the office of the County Recorder of said county, described as follows:

Beginning at a point in the Southeasterly boundary of said Lot 9, distant thereon North $43^{\circ} 43' 37''$ East (shown on said map of Rowland Addition No. 2 as North $43^{\circ} 40'$ East) 168.75 feet from the Northeast corner of said Lot 10; thence leaving a bearing of Southeasterly boundary line and entering said Lot 9 along a line having a bearing of North $85^{\circ} 54' 39''$ West which passes through a point in the Westerly boundary of said Lot 9, distant thereon north $6^{\circ} 36' 14''$ East 970.30 feet from the Southwest corner of said Lot 9, a distance of 563.83 feet to a point in said line with the $85^{\circ} 54' 39''$ East 383.73 feet from the point of intersection of said line with the aforementioned Westerly boundary of said Lot 9, being the true point of beginning; thence North $6^{\circ} 33' 39''$ East 85.00 feet thence South $50^{\circ} 22' 49''$ West 122.68 feet to a point that is North $85^{\circ} 54' 39''$ West 85.00 feet from the true point of beginning; thence South $85^{\circ} 54' 39''$ East 85.00 feet to the true point of beginning.

FILE NO. 68518-RD**(LEGAL DESCRIPTION CONTINUED)**

EXCEPT THEREFROM one-half interest in all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet from the surface of said property, but with no right of surface entry, as provided in deed recorded in Book D64, Page 669, Official Records.

PARCEL 5:

That portion of Hatcher Avenue formerly Walnut Street, 50.00 feet wide, as shown on map of Rowland Addition No. 2, in the City of Industry, County of Los Angeles, State of California as per map recorded in Book 4, Page 7 of Maps, in the office of the County Recorder of said county, described as follows:

Beginning at an angle point of the Easterly line of Lot 10 of said Rowland Addition No. 2, said angle point shown thereon as being distant South 43° 40' West 252.89 feet, from the Northeast corner of said Lot 10; thence along said Easterly line, South 4° 25' 27" West 306.49 feet to the Southeasterly corner of said land described in deed to Northrop architectural systems recorded September 28, 1964, in Book D2642, Page 945, et seq., of Official Records in the office of said recorder; thence along the Southerly line of said land 85° 51' 33" West 5.00 feet to a line that is parallel with and distant Westerly 5.00 feet as measured at right angles from said Easterly line, thence along said parallel line North 4° 25' 27" East 208.31 feet to the beginning of a tangent curve concave Southeasterly and having a radius of 280.00 feet; thence Northeasterly along said curve, through a central angle of 10° 50' 39" an arc distance of 53.00 feet to a point on the Easterly line of said Lot 10 and the true point of beginning; thence continuing along said curve through a central angle of 17° 36' 52" an arc distance of 86.08 feet to a point of aforesaid line having a length of "252.89 feet", thence along last said line South 43° 43' 37" West 45.52 feet to said angle point; thence continuing along said Easterly line South 4° 25' 27" West 45.52 feet to the true point of beginning.

PARCEL 6:

That portion of Chestnut Street, 40.00 feet wide, as shown on map of Rowland Addition No. 2, in the City of Industry, County of Los Angeles, State of California, as per map recorded in Book 4, Page 7 of Maps, in the office of the County Recorder of said county, described as follows:

Beginning at an angle point on the Easterly line of Lot 10 of said Rowland Addition No. 2, said angle point shown thereon as being distant "South 43° 40' West 252.89 feet" from the Northeast corner of said Lot 10; thence along said Easterly line South 4°

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(LEGAL DESCRIPTION CONTINUED)

25' 27" West 306.49 feet to the Southeasterly corner of land described in deed to Northrop Architectural Systems recorded September 28, 1964, in Book 22642, Page 945, et seq., of Official Records in the office of said recorder; thence along the Southerly line of said land North 85° 51' 33" West 5.00 feet to a line that is parallel with and distant Westerly 5.00 feet as measured at right angles from said Easterly line; thence along said parallel line North 4° 25' 27" East 208.31 feet to the beginning of a tangent curve concave Southeasterly and having a radius of 280.00 feet; thence Northeasterly along said curve, through a central angle of 39° 18' 10" an arc distance of 192.08 feet, to a point of tangency with a line that is parallel with and 5.00 feet from Northwesterly as measured at right angles the Southeasterly lines of Lots 9 and 10 of said Rowland Addition No. 2, shown as bearing "South 43° 40' West"; thence along last said parallel line North 43° 43' 37" east 27.43 feet to a point which bears North 46° 16' 23" West 5.00 feet from the Southerly terminus of that certain curve in the Westerly line of the land described in Parcel 3 of deed of recorded in Book D3929, Page 162, of Official Records described as having a radius of 233.58 feet and a length of 271.05 feet, thence continuing North 43° 43' 37" East 0.84 feet to the beginning of a tangent curve concave Westerly and having a radius of 228.73 feet; thence Northeasterly Northerly and Northwesterly along last said curve through a central angle of 100° 07' 00" an arc distance of 399.67 feet; thence tangent to last said curve North 56° 23' 23" West 33.97 feet to the beginning of a tangent curve concave Northeasterly and having a radius of 2280.00 feet, said curve being tangent at its Westerly terminus with a line that is parallel with 54.00 feet Southwesterly as measured at right angles from the Easterly prolongation of that certain course in the Southerly line of San Jose Creek bearing "North 47° 15' 38" West" and having a distance of "534.17 feet" as described in Parcel 536, Part 1 of Superior Court Case No. 876897, a certified copy of which was recorded January 27, 1966, as Instrument No. 3238, in Book M2109, Page 117 of said Official Records; thence Northwesterly along last said curve through a central angle of 6° 33' 05" an arc distance of 260.70 feet to a point on the Southwesterly line of Chestnut Street, 40.00 feet wide, as shown on said map of Rowland Addition No. 2 and the true point of beginning; thence continuing along last said curve through a central angle of 2° 34' 40" an arc distance of 102.58 feet to last said parallel line; thence along last said parallel line North 47° 15' 38" West 129.70 feet to a point which bears North 42° 44' 22" East from the most Northerly corner of said deed to Northrop Architectural systems; thence South 42° 44' 22" West 16.56 feet to said most Northerly corner, being also a point on the Southwesterly line of said Chestnut Street, 40.00 feet wide; thence along said Southwesterly line South 51° 54' 19" East 233.01 feet to the true point of beginning.

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(LEGAL DESCRIPTION CONTINUED)

PARCEL 7:

That portion of Chestnut Street, 40.00 feet wide, as shown on the map of Rowland Addition No. 2, in the City of Industry, County of Los Angeles, State of California, as per map recorded in Book 4, Page 7 of Maps, in the office of the County Recorder of said county, together with that portion of Lot 9 of said Rowland Addition No. 2, described as Parcel 1 in deed recorded March 4, 1968, in Book D-3929, Page 162, Official Records of said county, described as a whole as follows:

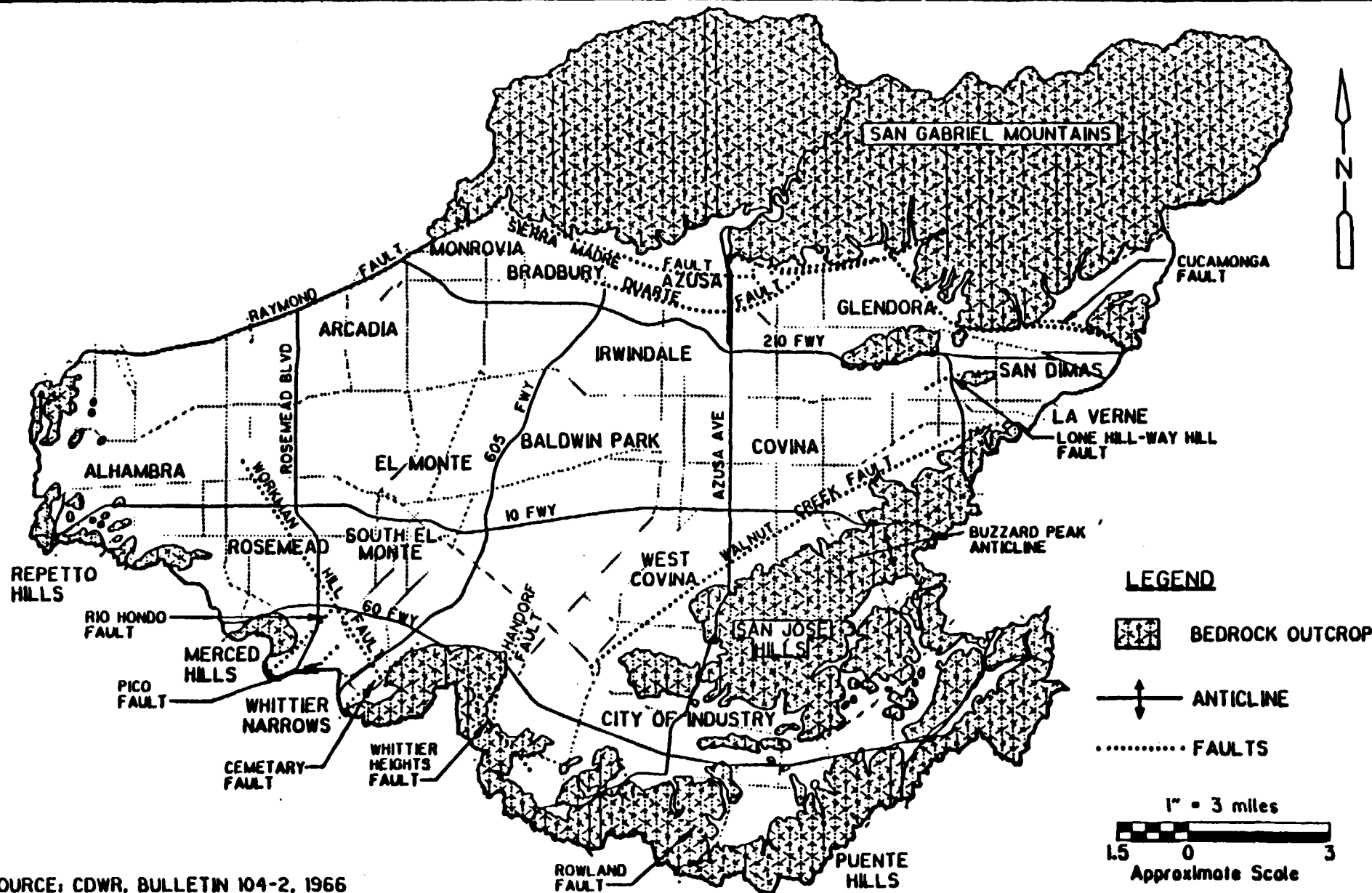
Beginning at an angle point on the Easterly line of Lot 10 of said Rowland Addition No. 2, said angle point shown on said map as being distant "South 43° 40' West 252.89 feet" from the Northeast corner of said lot 10; thence along said Easterly line of land described in deed to Northrop Architectural Systems recorded September 28, 1964, in Book D-2642, Page 945 et seq., of Official Records in the office of said recorder; thence along the Southerly line of said land North 85° 51' 33" West 5.00 feet to a line that is parallel with and distant Westerly 5.00 feet as measured at right angles from said Easterly line; thence along said parallel line North 4° 25' 27" east 208.31 feet to the Beginning of a tangent curve concave Southeasterly and having a radius of 280.00 feet; thence Northeasterly along said curve, through a central angle of 39°18'10" an arc with a distance of 192.08 feet, to a point of tangency with a line that is parallel with and 5.00 feet Northwesterly as measured at right angle from the Southeasterly lines of said Lots 9 and 10 shown as bearing "South 43°40' West"; thence along said parallel line North 43°43'37" East 277.43 feet to a point which bears North 46° 16' 23" West 5.00 feet from the Southerly terminus of that certain curve in page 162 of said Official Records described as having a radius of 233.58 feet and a length of 271.05 feet; thence continuing North 43°34'37" East 0.84 feet to the beginning of a tangent curve concave Westerly and having a radius of 228.73 feet; thence Northeasterly Northerly and Northwesterly along said curve through a central angle of 100°07'00" an arc distance of 399.67 feet; thence tangent to last said curve North 56°23'23" West 33.97 feet to the beginning of a tangent curve concave null and having a radius of 2280.00 feet, said curve being tangent at its Westerly terminus with a line that is parallel with and 54.00 feet Southwesterly as measured at right angles from the easterly prolongation of that certain course in the Southerly line of San Jose Creek bearing "North 47°15'38" West" and having a distance of "534.17 feet" as described in Parcel 536, Part 1 of Superior Court Case No. 876897, a certified copy of which was recorded January 27, 1966, as Instrument No. 3238, Book M2109, Page 117 of said Official Records; thence Northwesterly along last said curve through a central angle of 1°36'41" an arc distance of 64.12 feet to a Point on the Southwesterly line of said Parcel 3 and to the True Point of

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(LEGAL DESCRIPTION CONTINUED)

Beginning; thence continuing along said last curve through central angle of $0^{\circ}48'22''$ an arc distance of 32.08 to an intersection with the Southwesterly line of said Chestnut Street, 40.00 feet wide; thence along said Southwesterly line South $51^{\circ}54'19''$ East 26.52 feet to an angle point therein; thence South $65^{\circ}56'39''$ East 5.70 feet to the true point of beginning.

RD/jd
typed 12-4-98



SOURCE: CDWR, BULLETIN 104-2, 1966

PUENTE VALLEY OU INTERIM RI/FS

SAN GABRIEL BASIN STRUCTURE MAP

CDMenvironmental engineers, scientists,
planners, & management consultants



INDUSTRY URBAN-DEVELOPMENT AGENCY

Members:

Scella Harrison, Chairman
Annie Faure, Secretary
Mary V. Handorf
Philip Iriarte
Rolene Harrison

Administrative Offices
15651 East Stafford Street
Post Office Box 7089
City of Industry, California 91744
(626) 961-6341

VIA FEDERAL EXPRESS

July 15, 1999

Brett P. Moffatt, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

**Re: Prospective Purchaser Agreement for the Property
at 999 Hatcher Avenue, City of Industry, California**

Dear Mr. Moffatt:

The purpose of this letter is to confirm, on behalf of the City of Industry (the "City") and the Industry Urban-Development Agency (the "Redevelopment Agency") certain understandings and supply you with certain information regarding a potential Prospective Purchaser Agreement between your agency and the Redevelopment Agency. This agreement will cover the 17-acre parcel of commercial property commonly known as 999 Hatcher Avenue, City of Industry, California (the "Property").

You and your colleague from the U.S. Department of Justice, Michael Rockett, have agreed to recommend that the U.S. Environmental Protection Agency ("USEPA") and the U.S. Department of Justice ("DoJ") approve a Prospective Purchaser Agreement (the "Agreement") for the Property, retroactive to January 25, 1999, the date the Redevelopment Agency took control of the Property. The Agreement generally will have the standard terms for prospective purchaser agreements set out in your agency's guidance for such agreements [USEPA Office of Enforcement and Compliance Assurance, "Guidance on agreements with Prospective Purchasers of Contaminated Property," (May 4, 1995)], including mutual covenants not to sue, and contribution protection for the Redevelopment Agency. The Redevelopment Agency will pay \$25,000 to USEPA for the Agreement, which funds USEPA will apply to its account for the Puente Valley Operable Unit ("PVOU"). In addition, the

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Redevelopment Agency will make lands and rights-of-way owned and controlled by it and the City of Industry (the "City") available for response actions as described below and in the Agreement. Redevelopment Agency staff has agreed to recommend to its board that it approve the Agreement with these key terms.

In order to recommend approval of the Agreement, you and Mr. Rockett have asked for certain items of information regarding the following three topics: (1) residual levels of contamination remaining on the Property; (2) for the construction phase of the Property's redevelopment, assurances of completion of closure of the former anodizing pit area under the direction of the California Department Toxic Substances Control ("DTSC"), and measures to avoid spreading contaminated soil over the Property during construction of the solid waste transfer and recycling station the Redevelopment Agency proposes for the Property; and (3) for the operating phase of redevelopment, measures to be used in the new solid waste transfer and recycling station to prevent new hazardous substances contamination on the Property. This letter, and its enclosure, provide the requested information.

The City and the Redevelopment Agency already have committed to make land they own available for facilities that are part of the PVOU superfund remedy addressing VOC contamination already existing in the area's soil and groundwater, such as monitoring wells, extraction wells, piping and VOC treatment units, and have reiterated that commitment in their earlier submission to USEPA Region IX for the Agreement. In making their earlier general commitment, the City and Redevelopment Agency had explained that it applied to open areas, such as streets, sidewalks and other right-of-way, and vacant lots they own. The City and Redevelopment Agency also anticipated that the precise areas of their land to be used would be identified in a remedial design process conducted by USEPA Region IX and the potentially responsible parties for the PVOU, in which the City could participate.

The Redevelopment Agency reiterates this general commitment, and extends it to remedial facilities that address existing VOC contamination in the San Gabriel Basin. The Redevelopment Agency also agrees to make parts of the Property available for facilities that address existing contamination, consistent with USEPA's obligation to use reasonable efforts in citing and operating remedial facilities to minimize interference with the operations of the solid waste transfer station on the Property.

The City and Redevelopment Agency ask that this land availability be subject to two conditions. First, USEPA or a group of potentially responsible parties cooperating with the USEPA ("PRPs") notify the Redevelopment Agency of its intent to locate remedial facilities on the Property before any firm decision to do so, and negotiate in good faith to agree to locate them as close to the edges of the Property as possible, or in adjacent City streets or right-of-way. Second, USEPA or the group of PRPs consult with the Redevelopment Agency in advance regarding detailed plans for installation and operation of the remedial facilities on the Property so as reasonably to minimize the disruption to the operation of the waste transfer station.

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RESIDUAL LEVELS OF CONTAMINATION REMAINING ON THE PROPERTY

As you know, between 1993 and 1997, the Property was subject to several sets of tests for volatile organic chemicals, and one set of tests for heavy metals. Also during this period, some investigations of past uses of the Property were conducted and reported. We understand that previous owners of or operators on the Property filed these reports with the California Regional Water Quality Control Board - Los Angeles Region (the "Board"), and the Board has forwarded copies of the reports to your agency. We made copies of these reports from the Board's files, and reviewed them. A chronological list of the reports that we copied and reviewed is set out in Enclosure 1 to this letter.

Based on these reports, the Redevelopment Agency will agree that, as of February 1999, one area of the Property had no more than moderate levels of VOC contamination, and the rest of the Property had at most trace amounts of VOCs. The area of moderate VOC contamination is approximately 60 feet by 90 feet, outlined by a dashed line on Enclosure 2 to this letter toward the back of the main building now on the Property, and encompassing the locations of the former degreaser and much of the former hazardous waste drum storage space. The contamination levels remaining in the soil within the outlined area generally does not exceed 150 parts per billion ("ppb") for TCA, and 40 ppb for each of PCE, TCE and DCE; within this area, the remaining contamination levels tend to fall with distance from the former degreaser, as more specifically indicated in reports dated May 14, 1996, May 21, 1996 and July 18, 1997 in Enclosure 1. Outside this outlined area, the levels of TCA remaining in soil do not exceed 20 ppb, and the levels of PCE, TCE and DCE do not exceed 5 ppb. No other halogenated VOCs are present in the Property's soils.

Also, based principally on the report dated October 1996 in Enclosure 1, the Redevelopment Agency will agree to the following concerning the 14 metals for which samples were taken on the Property in 1996. Four metals - antimony, beryllium, silver and thallium - are not present in the soils of the Property. Other metals are generally present throughout the Property at low levels. Four metals - cobalt, copper, molybdenum and zinc - are present at levels less than their respective Soluble Threshold Limit Concentrations ("STLC"). Six are present at levels moderately above their respective STLCs: barium (less than 2 times); cadmium (less than 2 times); chromium (less than two times); lead (less than 2 times) and vanadium (less than two times).

CONSTRUCTION-PHASE MEASURES

Closure of the Former Anodizing Pit

An anodizing pit existed and was used starting some time after initial development of the Property in 1965, until 1986. This pit was located toward the back of the main building, still on the Property, approximately where the designation "Pit" appears on Enclosure 2 to this letter.

While this anodizing pit has not operated since 1986, it has not yet received closure approval from DTSC pursuant to the California Hazardous Waste Control Law. Cal. Health and Safety Code, Sections 25246-25248. The Redevelopment Agency will assure, by the actions of other interested parties if possible and by its own actions if necessary, that any additional investigations and any cleanup of environmental contamination at the Property necessary to obtain closure approval from the DTSC are done no later than the time that construction of the new solid waste transfer and recycling station on the Property is complete. The Redevelopment Agency also will use its best efforts to obtain from DTSC a certificate of closure, or similar written document, within a reasonable time of the completion of all actions needed to obtain closure approval from DTSC.

Movement of Soils

Redevelopment for the new transfer station will involve demolition of the existing buildings, and grading of some of the existing soil on the Property. It may also involve shallow excavations at a few locations on the Property of no more than five feet of soil. DTSC may have certain requirements for these activities as part of the site closure process outlined above.

The Redevelopment Agency also will implement its own soil management program, to the extent not inconsistent with DTSC requirements. This program will provide, among other things, that any soil moved during construction in the area outlined with solid lines on Enclosure 2 to this letter will be batch tested for TCA, PCE, TCE and DCE. If any of these VOCs is detected in a batch of soil at levels above Maximum Contaminant Levels ("MCLs"), that batch will be removed from the Property and transported and disposed of in accordance with all applicable federal and state laws. The soil in all batches with no such VOC detections, and with no heavy metal detections as described below, may be kept on the Property and reused in the redevelopment.

The soil management program also will provide that any soil moved during construction on the Property will be batch tested for heavy metals. If any of the heavy metals is detected in a batch of soil above the Soil Screening Levels in USEPA Region IX's current Preliminary Remediation Goals, or, for those metals not assigned such Soil Screening Levels, above one-half that metal's residential Preliminary Remediation Goal, that batch will be removed from the Property and transported and disposed of in accordance with all applicable federal and state laws. The soil in all batches with no such detections and no VOC detections as described above may be reused in the redevelopment of the Property.

The City or the Redevelopment Agency shall cause a written soil management program for the redevelopment of the Property to be delivered to you at least 30 days before the start of any grading or excavation on the Property. The Redevelopment Agency will, at your agency's option, consult

with USEPA Region IX regarding any aspect of the soil management program that relates to testing for, handling of, or disposal of contaminated soil, or that address threats to human health or welfare or to the environment. The Redevelopment Agency shall accept USEPA Region IX's written recommendations for changes or additions to the program so long as the recommended changes are: (1) required by applicable federal or state laws; or (2) reasonable, in light of current industry practices, for helping to achieve or maintain compliance with applicable federal and state laws or to address threats to human health, welfare or the environment. The Redevelopment Agency understands that USEPA will provide written recommendation and other comments, if possible, within 30 days of receipt of the written soil management plan, any related documents, and a request for review, comment and approval.

Further, the construction contractor for the transfer station will include in its health and safety plan for the facility a component addressing potential VOC and metals contamination. All those who work on construction of the new transfer station will be trained to implement the health and safety plan, and a copy of the plan will be kept at the Property during construction at all times.

OPERATIONS MEASURES

The Redevelopment Generally

After redevelopment as a solid waste transfer and recycling center, several acres of the Property will be covered by a fully enclosed building with a concrete slab foundation about one foot thick. This building will contain a small office, and all the areas to be used for placing, processing and shipping the incoming solid waste and the outgoing recyclables and solid waste. Well over half of the Property will be open and uncovered. The open areas will be paved in asphalt, landscaped, or graded flat. The asphalt areas generally will be used as driveways and parking spaces, and the landscaped and graded area will be left unused.

Measures to Avoid the Introduction of Hazardous Substances onto the Redeveloped Property

The new solid waste transfer and recycling station will be a "state-of-the-art" facility in many respects, including in its hazardous materials handling features and practices. The transfer station will incorporate both design features and operating practices to assure that no significant amounts of hazardous substances come onto the Property, and no such substances are spilled into the soil. The following five design features will help to provide these assurances.

1. All solid waste and recyclables coming into, being processed in, and leaving the facility will be placed on concrete floors in enclosed buildings. No materials received at the facility will be disposed of at the Property; all materials will be processed and sent elsewhere for recycling or disposal.

2. All these covered concrete areas will drain to drainpipes in the same areas, which will run through a clarifier, and will discharge to the municipal sanitary sewer.
3. Storm water falling on loading areas and truck parking areas outside but near the building will drain through a clarifier with capacity to hold the first flush of a rainfall, and then into storm drains.
4. At a minimum, the transfer station will have a separate, fully enclosed locked room with concrete floors for temporary storage of all hazardous substances removed from the general stream of solid waste coming into the facility. The transfer station also will comply with all state and federal laws applicable to hazardous wastes.
5. The transfer station will have one large clarifier, with a capacity of approximately 3,000 gallons, located just outside the building. The clarifier will be a Gensen Precast oil/sand separator, or similar product, designed to separate waste oils from the transfer station's wastewater flows. The clarifier will chemically treat the oils that are separated from and skimmed off the wastewater. The clarifier also will be emptied, cleaned, inspected and, if necessary, repaired annually.

Moreover, as part of its routine operations, the waste transfer station will ban all hazardous substances, including industrial solvents and low-level hazardous waste such as waste oil, from the loads of hazardous waste coming into the facility. In order to enforce the ban, the transfer station will have a mandatory load-checking program with procedures for, among other things, visual checking of every load for suspicious materials and containers, focused inspections of selected loads for hazardous substances, immediate segregation of all hazardous substances identified at any time anywhere in the facility, temporary storage of hazardous substances in the locked room noted above, and disposal of the hazardous substances off-site at a pre-identified and properly permitted hazardous waste disposal facility. This load-checking program, and all other aspects of the waste transfer and recycling station's operations, will comply with all federal and state laws relating to hazardous substances.

The transfer station's program also will bar customers from future use of the waste transfer station after they send three loads containing hazardous substances to the station in any 12-month period. The program will include appropriate training for all supervisors and employees, with written records showing the training received by each person. Finally, the program will be described in a written manual, a copy of which will be kept at the transfer station at all times.

In addition to this specific program designed to prevent hazardous substances from ever reaching the

Brett P. Moffatt, Esq.
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Property, the soils on the Property also should be protected from new contamination by the requirement that the waste transfer operation comply with the Industrial Stormwater Permit regulation of the State Water Resources Control Board. This regulation mandates that the station's operator formulate and implement Best Management Practices for all open areas to prevent pollutants from contaminating stormwater that falls on and flows across open parking lots, landscaped areas and unpaved soils toward nearby storm drains. The practical effect of this regulation will be to compel monitoring of all open areas to assure that materials containing solvents, oils and other potential pollutants are not placed there.

Sincerely,

A handwritten signature in black ink, appearing to read 'Carl M. Burnett', with a large, sweeping initial 'C'.

Carl M. Burnett
Executive Director

Enclosures

c: Michael Rockett, Esq. (by U.S. Mail, w/encl.)
James A. Geocaris, Esq. (by U.S. Mail, w/encl.)

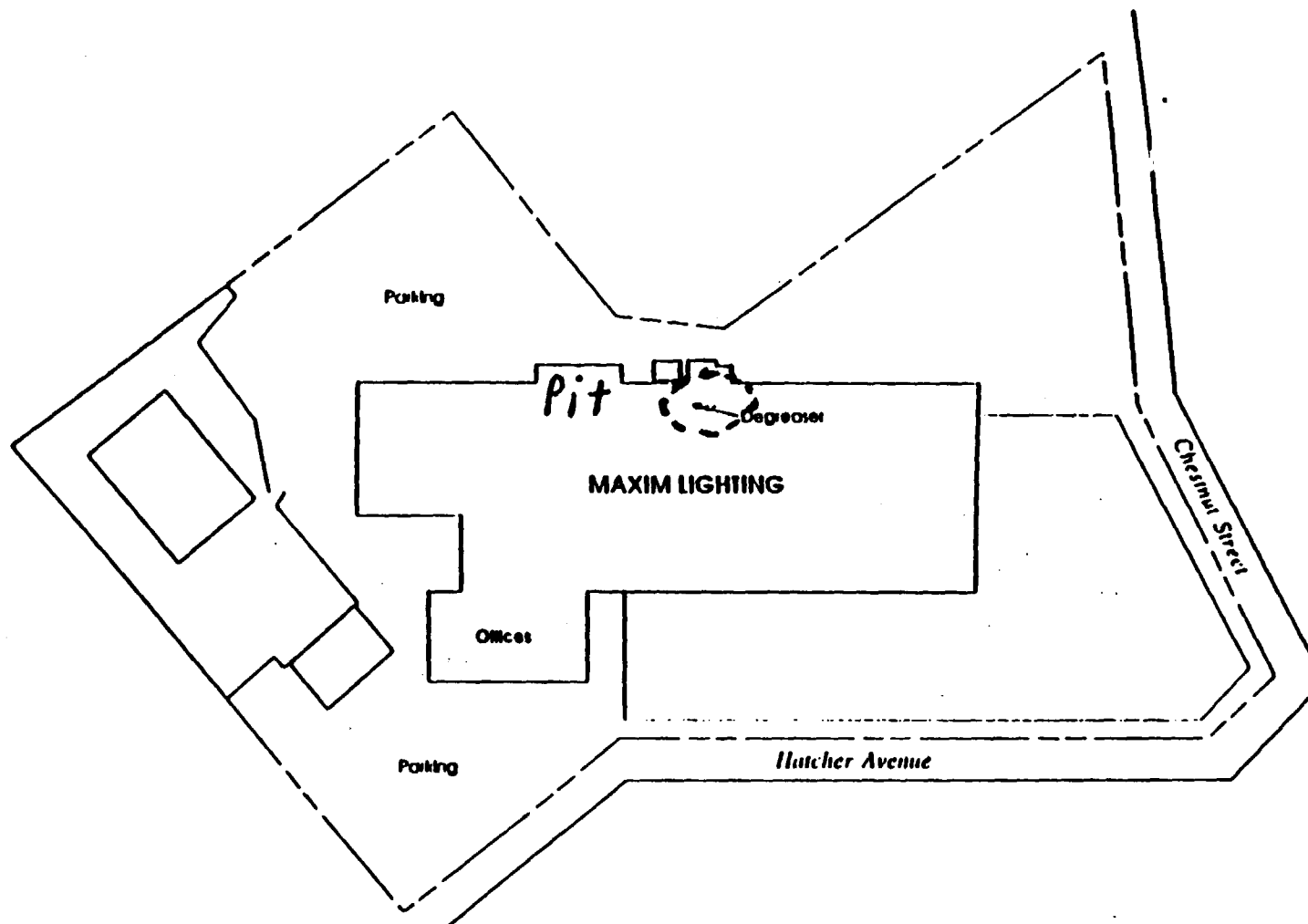
**LIST OF ENVIRONMENTAL INVESTIGATION REPORTS
FOR THE PROPERTY AT 999 HATCHER AVENUE, CITY OF INDUSTRY
CONDUCTED FROM 1993 THROUGH 1997**

Listed below are the environmental investigation reports reviewed last fall by representatives of the City of Industry for the Maxim Lighting property located at 999 Hatcher Avenue in the City of Industry. Copies of these reports were obtained from the file for this property at the offices of the California Regional Water Quality Control Board - Los Angeles Region.

The entries for each report below are arranged in chronological order. Each entry gives the date of the report, the consulting firm that wrote it, and its title.

<u>DATE</u>	<u>AUTHOR AND TITLE</u>
8/27/93	Environmental Support Technologies, "Soil Gas Survey Report"
5/3/96	Applied Biogenics, "Well Investigation Program"
5/14/96	Environmental Support Technologies, "Second Sampling Episode, Soil Gas Report"
5/21/96	Apex Environmental, "Subsurface Investigation Report"
10/96	Enviropro, "Limited Environmental Assessment of Heavy Metals Contamination"
1/27/97	American Analytics, "Soil Gas Investigation Report"
6/13/97	Enviropro, "Additional Soil Gas Investigation"
7/18/97	Enviropro, "Groundwater Sampling Report"

Enclosure 1 to Letter of July 15, 1999 to Brett P.
Moffatt, Esq. from Carl M. Burnett



0 100 200 300

Approximate
Graphic Scale: 1 inch Equals 200 Feet



Enclosure 1 to letter of
July 15, 1999 to Brett P.
Moffatt, Esq. from Carl
M. Burnett



Client:
Maxim Lighting
999 South Hatcher Avenue
Industry, California

SITE PLAN
Maxim Lighting
999 South Hatcher Avenue
Industry, California

Figure 2

Drawn By: H. Lee
Date: May 16, 1998

Checked By: LS
Project No: LP001

Approved By:
Revision No: